

AMENDED IN ASSEMBLY SEPTEMBER 6, 2001

AMENDED IN ASSEMBLY AUGUST 30, 2001

AMENDED IN ASSEMBLY AUGUST 23, 2001

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AMENDED IN ASSEMBLY JUNE 29, 2001

AMENDED IN ASSEMBLY JUNE 13, 2001

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AMENDED IN SENATE APRIL 25, 2001

## **SENATE BILL**

**No. 773**

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### **Introduced by Senator Speier and Assembly Member Jackson**

(Principal coauthor: Assembly Member Alquist)

(Coauthors: Assembly Members Chan and Goldberg)

February 23, 2001

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An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Speier. Financial institutions: confidential consumer information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies, as specified.

This bill would enact the Financial Information Privacy Act of 2002, which would require a financial institution to provide specified notice to, and to obtain the consent of, a customer before disclosing to or sharing confidential consumer information, as defined, with any nonaffiliated 3rd party, subject to certain exceptions. The bill would also require a financial institution to provide its customers with a written form that allows the customer the opportunity to request, among other things, that the financial institution refrain from sharing the confidential consumer information of the customer with an affiliate of the financial institution or outside companies. *The bill would provide that a financial institution is not required to provide this written form to its customers if the financial institution does not disclose any confidential consumer information to any nonaffiliated 3rd party or to any affiliate.*

This bill would provide that a financial institution shall not deny a consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share confidential consumer information with affiliates of the financial institution. The bill would require a financial institution to comply with the consumer's request regarding confidential consumer information within 45 days of receipt of the request.

This bill would provide that the bill would not apply to disclosures between certain types of member-owned financial institutions and its affiliates provided that certain requirements are met. The bill would also provide that a financial institution may disclose confidential consumer information to a nonaffiliated 3rd party in order for it to perform certain services on behalf of the financial institution if specified requirements are met.

*The bill would provide that confidential consumer information may be released in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that it would not change existing law regarding access by law enforcement agencies to information held by financial institutions.*

This bill would also provide various civil remedies and administrative fines and civil penalties for negligent, or knowing and willful violations of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Division 1.2 (commencing with Section 4050) is added to the Financial Code, to read:

DIVISION 1.2. FINANCIAL INFORMATION PRIVACY  
ACT

4050. This division shall be known and may be cited as the Financial Information Privacy Act of 2002. This division shall become operative on July 1, 2002.

4051. (a) The Legislature intends for financial institutions to provide their customers notice and meaningful choice about how consumers' personal information is shared or sold by their financial institutions.

(b) It is the intent of the Legislature in enacting the Financial Information Privacy Act of 2002 to afford persons greater privacy protection than those provided in Public Law 106-102, the federal Gramm, Leach, and Bliley Act, and that this division be interpreted to be consistent with that purpose.

4052. For the purposes of this division:

~~(a) "Confidential consumer information" means personally identifiable financial information (1) that a consumer provides to a financial institution to obtain a product or service from the financial institution, (2) about a consumer resulting from any transaction involving a product or service between the financial institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in connection with providing a product or service to that consumer. Any personally identifiable information is financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer, including the fact that a consumer is a customer of a financial institution. Confidential consumer information does not include publicly available information that is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made of federal, state, or local law, except that confidential consumer information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to~~

~~them that is derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived without using any confidential consumer information.~~

(a) “Confidential consumer information” means personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution. Confidential consumer information does not include publicly available information that is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made by federal, state, or local law. Confidential consumer information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived without using any confidential consumer information.

(b) “Personally identifiable financial information” means information (1) that a consumer provides to a financial institution to obtain a product or service from the financial institution, (2) about a consumer resulting from any transaction involving a product or service between the financial institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in connection with providing a product or service to that consumer. Any personally identifiable information is financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer, including the fact that a consumer is a customer of a financial institution or has obtained a financial product or service from a financial institution. Personally identifiable financial information includes all of the following:

(1) Information a consumer provides to a financial institution on an application to obtain a loan, credit card, or other financial product or service.

(2) Account balance information, payment history, overdraft history and credit or debit card purchase information.

(3) The fact that an individual is or has been a customer of a financial institution or has obtained a financial product or service from a financial institution.

(4) Any information about a financial institution's consumer if it is disclosed in a manner that indicates that the individual is or has been the financial institution's consumer.

(5) Any information that a consumer provides to a financial institution or that a financial institution or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

(6) Any information collected through an Internet cookie or an information collecting device from a Web server.

(7) Information from a consumer report.

(c) "Financial institution" generally means any institution engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code and doing business in this state. *An institution that is significantly engaged in financial activities is a financial institution.* The term "financial institution" does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001 et seq.), provided that the entity does not sell or transfer confidential consumer information to a nonaffiliated third party. The term "financial institution" does not include institutions chartered by Congress specifically to engage in a proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer, as long as those institutions do not sell or transfer confidential consumer information to a nonaffiliated third party. The term "financial institution" does not include any person licensed as a dealer under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code that enters into contracts for the installment sale or lease of motor vehicles pursuant to the requirements of Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of the Civil Code and assigns substantially all of those contracts to financial institutions within 30 days. *The term "financial institution" does not include any provider of professional services, or any wholly owned affiliate thereof, that is prohibited by rules of professional*

1 *ethics or applicable law from voluntarily disclosing confidential*  
2 *client information without the consent of the client.*

3 (d) “Affiliate” means any person or entity that, directly or  
4 indirectly, controls, is controlled by, or is under common control  
5 with another person or entity. *A franchisor, including any affiliate*  
6 *thereof, shall be deemed an affiliate of the franchisee for purposes*  
7 *of this division.*

8 (e) “Nonaffiliated third party” means any entity that is not an  
9 affiliate of, or related by common ownership or affiliated by  
10 corporate control with, the financial institution.

11 (f) “Consumer” means an individual *resident of this state* who  
12 obtains or has obtained a financial product or service from a  
13 financial institution that is to be used primarily for personal,  
14 family, or household purposes, or that individual’s legal  
15 representative. *For purposes of this division, an individual is not*  
16 *a consumer of a financial institution solely because he or she is (1)*  
17 *a participant or beneficiary of an employee benefit plan that a*  
18 *financial institution administers or sponsors, or for which the*  
19 *financial institution acts as a trustee, insurer, or fiduciary, (2)*  
20 *covered under a group or blanket insurance policy or group*  
21 *annuity contract issued by the financial institution, or (3) a*  
22 *beneficiary in a workers’ compensation plan provided that (A) the*  
23 *financial institution provides all required notices and rights*  
24 *required by this division to the plan sponsor, group or blanket*  
25 *insurance policyholder, or group annuity contractholder and (B)*  
26 *the financial institution does not disclose to any affiliate or any*  
27 *nonaffiliated third-party confidential consumer information about*  
28 *the individual except as authorized in Section 4056. A consumer*  
29 *does not include an individual who obtains products or services for*  
30 *business, commercial, or agricultural purposes.*

31 (g) “Control” means the direct or indirect possession of the  
32 power to direct or cause the direction of the management and  
33 policies of another entity. Control includes any of the following:  
34 (1) ownership or power to vote 25 percent or more of the  
35 outstanding shares of any class of voting security of a company,  
36 acting through one or more persons, (2) power in any manner over  
37 the election of a majority of the directors, or of individuals  
38 exercising similar functions, or (3) the power to exercise a  
39 directing influence over the management of policies of a company.



(h) “Necessary to effect, administer, or enforce” means the following:

(1) The disclosure is required, or is a usual, appropriate, or ~~customary~~ *acceptable* method to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer’s account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes the following:

(A) Providing the consumer or the consumer’s agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product.

(B) The accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or another party involved in providing the financial service or product.

(2) The disclosure is required or is a lawful method to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction or providing the product or service.

(3) The disclosure is required, or is a usual, appropriate, or ~~customary~~ *acceptable* method for insurance underwriting at the consumer’s request, for reinsurance purposes, or for any of the following purposes as they relate to a consumer’s insurance:

(A) Account administration.

(B) Reporting, investigating, or preventing fraud or material misrepresentation.

(C) Processing premium payments.

(D) Processing insurance claims.

(E) Administering insurance benefits, including utilization review activities.

(F) For internal research purposes.

(G) As otherwise required *or specifically permitted* by federal or state law.

(4) The disclosure is required, or is a usual, appropriate, or ~~customary~~ *acceptable* method, in connection with the following:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts



1 charged, debited, or otherwise paid using a debit, credit or other  
2 payment card, check, or account number, or by other payment  
3 means.

4 (B) The transfer of receivables, accounts, or interests therein.

5 (C) The audit of debit, credit, or other payment information.

6 (i) “Financial product or service” means any product or  
7 service that a financial holding company could offer by engaging  
8 in an activity that is financial in nature or incidental to financial  
9 activity under subsection (k) of Section 1843 of Title 12 of the  
10 United States Code (the United States Bank Holding Company Act  
11 of 1956). Financial service includes a financial institution’s  
12 evaluation or brokerage of information that the financial  
13 institution collects in connection with a request or an application  
14 from a consumer for a financial product or service.

15 (j) “Clearly and conspicuously” means displayed in a manner  
16 that is readily noticeable, readable, and understandable to  
17 consumers. Factors to be considered in determining whether a  
18 notice or disclosure is clear and conspicuous include prominence,  
19 proximity, absence of distracting elements, and clarity and  
20 understanding of the text disclosure.

21 (k) “Widely distributed media” means publicly available  
22 information from a telephone book, a television or radio program,  
23 a newspaper or a Web site that is available to the general public on  
24 an unrestricted basis.

25 4052.5. *This division shall be applicable to residents of this*  
26 *state. For purposes of this division, a person shall be considered*  
27 *a resident of this state if the person’s last known mailing address,*  
28 *as shown in the records of the financial institution, is located in this*  
29 *state.*

30 4053. (a) A financial institution shall not disclose to, or share  
31 a consumer’s confidential consumer information with, any  
32 nonaffiliated third party unless the financial institution has  
33 provided written notice *pursuant to subdivision (c)*, to the  
34 consumer to whom the confidential consumer information relates  
35 and unless the financial institution has obtained a ~~written or~~  
36 ~~electronic~~ consent acknowledgment from the consumer *pursuant*  
37 *to subdivision (c)*, that authorizes the financial institution to  
38 disclose or share the confidential consumer information. A  
39 financial institution shall not deny a consumer a financial product  
40 or a financial service because the consumer has not provided the



consent required by this subdivision to authorize the financial institution to disclose or share his or her confidential consumer information with any nonaffiliated third-party *provided that nothing in this section shall prohibit the disclosure of confidential consumer information as provided in Section 4056.*

(b) (1) A financial institution ~~may not disclose~~ *shall not disclose to, or share a consumer's* confidential consumer information ~~to~~ *with*, an affiliate unless the financial institution clearly and conspicuously ~~discloses~~ *notifies the consumer* annually, commencing on ~~July 1, 2002, to the consumer in writing pursuant to Section 4054~~ *July 1, 2002, in writing to the consumer pursuant to subdivision (c)* that the information may be disclosed to an affiliate of the financial institution. A financial institution does not disclose information to its affiliate merely because employees of the financial institution and its affiliate have access to common information systems or data bases, provided that confidential consumer information is used or otherwise disclosed only as permitted by this division. Pursuant to this ~~disclosure notice~~ the consumer shall be provided an opportunity, before disclosure of information, 45 days from the date of postmark *or other postal verification of mailing*, of the notice to direct that the confidential consumer information not be disclosed to an affiliate. A consumer may direct at any time that his or her confidential consumer information not be disclosed to an affiliate. When a consumer directs that confidential consumer information not be disclosed, that direction is in effect until otherwise stated by the consumer. A financial institution shall not deny a consumer a financial product or a financial service because the consumer has directed pursuant to this subdivision that his or her confidential consumer information not be disclosed to an affiliate *provided that nothing in this section shall prohibit the disclosure of confidential consumer information as provided in Section 4056.* A financial institution may elect to comply with the requirements of subdivision (a) with respect to disclosure of confidential consumer information to an affiliate.

(2) ~~(A)~~ *If a financial institution does not have a continuing relationship with a consumer other than the initial transaction in which the product or service is provided, no annual disclosure requirement exists pursuant to this section as long as the financial*

1 *institution provides the consumer with the form required by this*  
2 *section at the time of the initial transaction.*

3 (3) A financial institution shall comply with a consumer's  
4 directions concerning the sharing of his or her confidential  
5 consumer information within 45 days of receipt by the financial  
6 institution.

7 ~~(B)~~

8 (c) The following form shall be sent by the financial institution  
9 to the consumer *with a self-addressed, stamped, return envelope*  
10 so that the consumer may make a decision regarding the sharing  
11 of his or her confidential consumer information:

12  
13 IMPORTANT PRIVACY CHOICES FOR CALIFORNIANS  
14

15 Under California law, you have a right to restrict the sharing of  
16 your financial information within our family of companies  
17 regarding your consumer purchases, account balances, and other  
18 personal information. We must also get your permission to share  
19 your financial information outside our family of companies. To  
20 exercise your choices call this toll-free telephone number \_\_\_\_\_,  
21 contact us via the Internet, or mark and sign the form below and  
22 send it back to us in the self-addressed postage paid envelope.  
23

24 YOU MAY RETURN THIS FORM AT ANY TIME AND YOUR  
25 CHOICES WILL REMAIN IN EFFECT UNLESS YOU  
26 REQUEST A CHANGE. HOWEVER, IF WE DO NOT HEAR  
27 FROM YOU WITHIN 45 DAYS, WE MAY SHARE YOUR  
28 FINANCIAL INFORMATION WITHIN OUR FAMILY OF  
29 COMPANIES BUT WE MAY NOT SHARE YOUR  
30 FINANCIAL INFORMATION OUTSIDE OUR FAMILY OF  
31 COMPANIES.  
32



Please mark your choices below. See the enclosed for further information.

If you want to maximize your privacy protection under California law:

☐ I do not want you to share my financial information within your family of companies or with outside companies.

If you want to authorize the sharing of information, indicate your privacy choices below:

☐ I want you to share my financial information such as my address, telephone number, purchases, account balances and other personal information with outside companies.

☐ You may share my financial information but I do not wish to be marketed through:

\_\_\_\_\_ Telephone \_\_\_\_\_ Mail \_\_\_\_\_ E-mail

Name: \_\_\_\_\_ Account Number: \_\_\_\_\_

Signature: \_\_\_\_\_

~~(e)~~

(d) When a financial institution with no more than five affiliates and collective assets of up to and including \$1 billion enters into an agreement with a third party to offer, on an exclusive basis, a financial service or financial product to its customers, it may share a consumer's confidential consumer information on an exclusive basis with the third party that offers the financial service or financial product in the name of the financial institution, provided that the offer clearly states the name of the financial institution that is a party to the making of the offer, and provided that the third party is prohibited from disclosing or otherwise using the customer information except as necessary to provide information about the financial service or financial product. For purposes of this subdivision, "third party" means financial institutions as defined in ~~subdivision (b) of~~ Section 4052. For purposes of this subdivision, "exclusive basis" means a single

1 outside service or product offered for each separate category of  
2 financial service or financial product provided in the name of the  
3 financial institution with no more than five affiliates and collective  
4 assets of up to and including \$1 billion. ~~Agreements entered into~~  
5 *The disclosure of confidential consumer information* pursuant to  
6 this subdivision shall be subject to the *notice* requirements of  
7 subdivision (b) of this section.

8 ~~(d) If, pursuant to subdivision (b), the consumer declines to~~  
9 ~~direct that confidential consumer information not be disclosed to~~  
10 ~~an affiliate, then a financial institution may be allowed to market~~  
11 ~~its own products or services to that consumer, provided that any~~  
12 ~~confidential consumer information disclosed in the marketing of~~  
13 ~~the financial institution's own products or services be disclosed~~  
14 ~~solely to administer the marketing of the financial institution's~~  
15 ~~own products or services and not for any other purpose.~~

16 ~~4054. (a) A financial institution that proposes to disclose or~~  
17 ~~share a consumer's confidential consumer information shall~~  
18 ~~provide a written notice to the consumer that describes (1) the~~  
19 ~~specific types of information that would be disclosed or shared, (2)~~  
20 ~~the general circumstances under which the information would be~~  
21 ~~disclosed or shared, (3) the specific types of persons or businesses~~  
22 ~~that would receive the information, and (4) the specific proposed~~  
23 ~~types of uses for the information.~~

24 ~~(e) Nothing in this division shall prohibit a financial institution~~  
25 ~~from marketing its own products and services or the products and~~  
26 ~~services of others to the financial institution's own customers,~~  
27 ~~provided no confidential consumer information is disclosed except~~  
28 ~~as permitted by Section 4056.~~

29 ~~(f) Except as otherwise provided in this division, an entity that~~  
30 ~~receives confidential consumer information from a financial~~  
31 ~~institution under this division shall not disclose this information to~~  
32 ~~any other entity, unless the disclosure would be lawful if made~~  
33 ~~directly to the other entity by the financial institution.~~

34 ~~4054. (a) Nothing in this division shall require a financial~~  
35 ~~institution to provide a written notice to a consumer pursuant to~~  
36 ~~Section 4053 if the financial institution does not disclose~~  
37 ~~confidential consumer information to any nonaffiliated~~  
38 ~~third-party or to any affiliate, except as provided in Section 4056.~~

39 ~~(b) A financial institution shall provide notices and consent~~  
40 ~~acknowledgments required by this division to consumers as~~

1 separate documents that are easily identifiable and distinguishable  
2 from other documents that otherwise may be provided to a  
3 consumer. *A notice provided to a member of a household pursuant*  
4 *to Section 4053 shall be considered notice to all members of that*  
5 *household unless that household contains another individual who*  
6 *also has a separate account with the financial institution.*

7 4055. (a) This division shall not apply to disclosures between  
8 a member-owned financial institution and its affiliates, or between  
9 like affiliates, provided that the disclosure is primarily for  
10 customer service purposes and not for marketing purposes, and  
11 that the financial institution meets all of the following  
12 requirements:

13 (1) A majority of the financial institution's customers are  
14 members of the United States military services, veterans of the  
15 United States military services, ~~and~~ current or former spouses *or*  
16 *dependents* of these persons and the primary purpose of the  
17 financial institution is to serve these persons.

18 (2) The financial institution and its affiliates are in compliance  
19 with Title V of the federal Financial Services Modernization Act.

20 (3) Customers of the financial institution and its affiliates are  
21 informed in writing on an annual basis of the opportunity to opt out  
22 of information sharing among the institution and its affiliates for  
23 marketing purposes.

24 (b) For purposes of this section, "marketing purposes" means  
25 for use in unsolicited telemarketing, unsolicited direct mail, or  
26 unsolicited commercial electronic mail for the primary purpose of  
27 encouraging the purchase or rental of, or investment in, property,  
28 goods, or services. For purposes of this section, "marketing  
29 purposes" shall not include communications to a person with that  
30 person's prior express invitation or permission, or in response to  
31 a communication from such person.

32 4056. (a) This division shall not apply to information that is  
33 not personally identifiable to a particular person.

34 (b) Sections 4053 and 4054 shall not prohibit the release of  
35 confidential consumer information under the following  
36 circumstances:

37 (1) The confidential consumer information is necessary to  
38 effect, administer, or enforce a transaction requested or authorized  
39 by the consumer, or in connection with servicing or processing a  
40 financial product or service requested or authorized by the

1 consumer, or in connection with maintaining or servicing the  
2 consumer's account with the financial institution, or with another  
3 entity as part of a private label credit card program or other  
4 extension of credit on behalf of such entity, or in connection with  
5 a proposed or actual securitization or secondary market sale,  
6 including sales of servicing rights, related to a transaction of the  
7 consumer.

8 (2) The confidential consumer information is released with the  
9 consent of or at the direction of the consumer.

10 (3) The confidential consumer information is:

11 (A) Released to protect the confidentiality or security of the  
12 financial institution's records pertaining to the consumer, the  
13 service or product, or the transaction therein.

14 (B) Released to protect against or prevent actual or potential  
15 fraud, identity theft, unauthorized transactions, claims, or other  
16 liability.

17 (C) Released for required institutional risk control, or for  
18 resolving customer disputes or inquiries.

19 (D) Released to persons holding a legal or beneficial interest  
20 relating to the consumer.

21 (E) Released to persons acting in a fiduciary or representative  
22 capacity on behalf of the consumer.

23 (4) The confidential consumer information is released to  
24 provide information to insurance rate advisory organizations,  
25 guaranty funds or agencies, applicable rating agencies of the  
26 financial institution, persons assessing the institution's  
27 compliance with industry standards, and the institution's  
28 ~~attorneys, accountants, and auditors, provided that the information~~  
29 ~~obtained is not used for any other purpose.~~ *attorneys, accountants,*  
30 *and auditors.*

31 (5) The confidential consumer information is released to the  
32 extent specifically required *or specifically permitted* under other  
33 provisions of law and in accordance with the Right to Financial  
34 Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law  
35 enforcement agencies, including a federal functional regulator, the  
36 Secretary of the Treasury with respect to subchapter II of Chapter  
37 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12  
38 U.S.C. Secs. 1951-1959), the California Department of Insurance,  
39 or the Federal Trade Commission, and self-regulatory  
40 organizations.

(6) The confidential consumer information is released (A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.); or (B) from a consumer report reported by a consumer reporting agency; ~~provided that the information obtained is not used for any other purpose.~~

(7) The confidential consumer information is released in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of confidential consumer information concerns solely ~~consumers of such business or unit, provided that customers of an acquired, sold, merged, transferred or partially or fully exchanged business or operating unit are notified of their desire to disallow the sharing of any confidential consumer information and given 30 days after the completion of the sale, merger, transfer or exchange of all or a portion of a business or operating unit to communicate their preference to the remaining entity. During this 30-day period, customers of the acquired entity shall not have their confidential consumer information disclosed except as provided elsewhere in this subdivision. The notice referenced in this provision shall be substantially the same format as that delineated in Section 4054, and shall explicitly refer by name both the entity with whom the customer initially established the relationship and the name of the remaining business entity.~~ *consumers of the business or unit.*

(8) The confidential consumer information is released to comply with federal, state, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(9) When a financial institution is reporting a known or suspected instance of elder or dependent adult financial abuse or is cooperating with a local adult protective services agency investigation of known or suspected elder or dependent adult financial abuse pursuant to Article 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code.



1     (10) ~~A financial institution may disclose~~ *The confidential*  
2     consumer information *is released* to a nonaffiliated third party in  
3     order for the nonaffiliated third party to perform services for or  
4     functions on behalf of, the financial institution in connection with  
5     the financial institution's products and services, such as mailing  
6     services, data *processing or* analysis, or customer surveys,  
7     provided that all of the following requirements are met:

8     (A) The services to be performed by the nonaffiliated third  
9     party would be lawful if performed by the financial institution.

10    (B) There is a written contract between the nonaffiliated third  
11    party and the financial institution that prohibits the nonaffiliated  
12    third party from disclosing or using the confidential consumer  
13    information other than to carry out the purpose for which the  
14    financial institution disclosed the information, as set forth in the  
15    written contract.

16    (C) The confidential consumer information provided to the  
17    nonaffiliated third party is ~~the minimum~~ *limited to that which is*  
18    *reasonably necessary* for the nonaffiliated third party to perform  
19    the services contracted for on behalf of the financial institution.

20    (11) *The confidential consumer information is released to*  
21    *identify or locate missing and abducted children, witnesses,*  
22    *criminals and fugitives, parties to lawsuits, parents delinquent in*  
23    *child support payments, organ and bone marrow donors, pension*  
24    *fund beneficiaries, and missing heirs.*

25    (c) *Nothing in this division is intended to change existing law*  
26    *relating to access by law enforcement agencies to information held*  
27    *by financial institutions.*

28    4056.5. (a) The restrictions on disclosure and use of  
29    confidential consumer information, and the requirement for  
30    notification, disclosure, and opportunity for the consumer to either  
31    direct that the confidential consumer information not be disclosed  
32    or provided prior written consent, as provided in this division, do  
33    not apply to any person or entity that meets paragraph (1) or (2)  
34    except when confidential consumer information is or will be  
35    shared with an affiliate or *nonaffiliated* third party.

36    (1) The person or entity is licensed in one or both of the  
37    following categories and is acting within the scope of the  
38    respective license:

39    (A) As an insurance ~~agent~~ *producer*, licensed pursuant to  
40    Chapter 5 (commencing with Section 1621), Chapter 6

(commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Division 1 of the Insurance Code.

(B) Is licensed to sell securities by the United States Securities and Exchange Commission.

(2) The person or entity meets the requirements in paragraph (1) and has a written contractual agreement with another person or entity described in paragraph (1) and the contract clearly and explicitly includes, ~~but is not limited to,~~ the following:

~~(A) The rights and obligations of the parties in the insurance or securities transaction.~~

*(A) The rights and obligations between the licensees arising out of the business relationship relating to insurance or securities transactions.*

(B) An explicit limitation on the use of confidential consumer information about a consumer to transactions authorized by the contract and ~~the requirements contained in~~ *permitted pursuant to* this division.

~~(C) The transactions specified in subparagraph (B) fall within~~

*(C) A requirement that transactions specified in the contract fall within the scope of activities permitted by the licenses of the parties.*

(b) The restrictions on disclosure and use of confidential consumer information, and the requirement for notification and disclosure provided in this division, shall not limit the ability of insurance ~~agents~~ *producers* and brokers to respond to written or electronic, including telephone, requests from consumers seeking price quotes on insurance products and services.

4057. (a) Any financial institution that negligently discloses or shares confidential consumer information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation.

(b) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential consumer information in violation of this division shall be liable upon a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation, or upon a second violation for an administrative fine or civil penalty not to exceed ten thousand dollars (\$10,000) per violation, or upon a third or

1 subsequent violation for an administrative fine or civil penalty not  
2 to exceed twenty-five thousand dollars (\$25,000) per violation.

3 (c) Any financial institution that knowingly and willfully  
4 obtains, discloses, or uses confidential consumer information in  
5 violation of this division for financial gain shall be liable upon a  
6 first violation for an administrative fine or civil penalty not to  
7 exceed five thousand dollars (\$5,000) per violation, or upon a  
8 second violation for an administrative fine or civil penalty not to  
9 exceed twenty-five thousand dollars (\$25,000) per violation, or  
10 upon a third or subsequent violation for an administrative fine or  
11 civil penalty not to exceed two hundred fifty thousand dollars  
12 (\$250,000) per violation and shall be subject to disgorgement of  
13 any proceeds or other consideration obtained as a result of the  
14 violation.

15 (d) Nothing in this subdivision shall be construed as  
16 authorizing an administrative fine or civil penalty under both  
17 paragraphs (2) and (3) for the same violation.

18 (e) This section shall become operative on and after July 1,  
19 2003.

20 4058. This division shall not be construed in a manner that is  
21 inconsistent with the federal Fair Credit Reporting Act (15 U.S.C.  
22 Sec. 1681 et seq.).

23 4059. The provisions of this division shall be severable, and  
24 if any phrase, clause, sentence, or provision is declared to be  
25 invalid or is preempted by federal law or regulation, the validity  
26 of the remainder of this division shall not be affected thereby.

